IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10457 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
MUSTAFAMIYA MOHAMMEDMIYA SHAIKH - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR PRABHAKAR UPADYAY for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 21/06/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Dagli, appearing on behalf of petitioner and learned

Advocate, Mr.Upadhyay, appearing on behalf of respondent.

2. With the consent of learned Advocates appearing for the respective parties, this matter is taken up for final hearing today.

3. In the present petition, the order passed by Conciliation Officer in Approval Application No.293 of 2002 dated 6.9.2002 is challenged by the petitioner Corporation. The allegations made against the respondent by the Corporation are that being an employee of the Corporation, he demanded Rs.15,000/- from the other employee for transfer of such employee from one depot to another depot. On the basis of that allegation, charge sheet was served and after completion of departmental inquiry, the respondent workman was dismissed from service on 25.6.2002. The respondent employee was working as a Traffic Inspector in Himmatnagar Division. The complaint was filed by one Shri Jivabhai Lavjibhai Patel. The finding given by Divisional Traffic

Superintendent (Default), Himmatnagar on 20.12.2000. After completion of departmental inquiry, the complaint which was filed by the complainant against the respondent workman, and no documentary evidence was produced to prove the misconduct against the concerned respondent. However, the observations are made that amount in question has been paid to Shri Jivabhai Lavjibhai Patel. Further finding is that in absence of document in respect to account and other relevant documents, the charges against the workman concerned are not proved. However, being an employee of the Corporation, he has made this transaction which is not proper and, therefore, he has been held liable. The conciliation officer has called the respective parties on 16.7.2002, 22.7.2002, 2.8.2002, 14.8.2002 and 28.2.2002. Ultimately, both the parties have made their submissions before the Conciliation Officer. The respondent workman has filed reply against this approval application and submissions were made on 14.8.2002. The contention was raised by respondent before the Conciliation Officer that

in departmental inquiry, complainant and other witnesses were not examined by the Corporation. So the employee concerned is not able to get any opportunity to cross-examine such complainant and other witness. The further contention was raised by respondent that no documentary evidence was produced by Corporation or reporter was not examined in inquiry. The statements given by certain persons, they are real brothers of the complainant and friends and, therefore, on that basis, charge cannot be said to be established against the respondent. After considering the submissions made by both the parties, the Conciliation Officer has come to the conclusion that no reasonable opportunity was given to the respondent workman during the departmental inquiry and according to ST Disciplinary Appeals Procedure, charge is not proved by leading proper evidence and producing documentary evidence in support of complaint. No independent witness was examined in inquiry. The sick leave of the workman was sanctioned even though his absence was treated in departmental inquiry and no

presenting Officer was appointed in departmental inquiry by the Corporation and, therefore, prima facie, according to Conciliation Officer, the charge is not established against the respondent workman and, therefore, considering various decisions of the Apex Court, Approval Application has been rejected on 6.9.2002.

4. I have considered the submissions made by both the learned Advocates and have perused the order passed by Conciliation Officer under Section 33(2)(b) of I.D.Act,1947. The Conciliation Officer has rightly appreciated the inquiry papers and evidence led in departmental inquiry. The incident is not related to the duties of the workman, but it is alleged outside transaction made by respondent employee which has nothing to do with the nature of his duties. In departmental inquiry, no direct evidence was produced by the reporter to prove the charge against the workman. The complainant was not examined and no other independent witness was examined. The presenting Officer was also not

appointed in inquiry. In respect to incident as alleged against the employee, no documentary evidence produced on record to establish the charge against the employee. Such prima facie scrutinity in the departmental inquiry made by the Conciliation Officer is within his jurisdiction under Section 33(2)(b) of the I.D.Act,1947. Therefore, according to my opinion, Conciliation Officer has not committed any error while passing such order. There is no jurisdictional error committed by Conciliation Officer while examining Approval Application filed by the Corporation. This question has been examined by the Apex Court in case of Lalaram Vs. DCM, reported in AIR 1978 SC 1004. The relevant observations made by Apex Court in Para.12 which is quoted as under :

> “12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under S. 33 (2) (b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper

domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Probesh Singh, (1964) 1 SCR 709 : (AIR 1964 SC 486) : Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar (1961) 1 Lab LJ 511) (SC); Hind Construction and Engineering Co. Ltd. v. Their Workmen, (1965) 2 SCR 83 : AIR 1965 SC 917; Workmen of Messrs Firestone Tyre and Rubber Company of India (P.) Ltd. v. Management, (1973) 3 SCR 587 : AIR 1973 SC 1227, and Eastern Electric and Trading Co. v. Baldev Lal, 1975 Lab IC 1435 : (AIR 1975 SC 1892) that though generally speaking the award of punishment for misconduct under under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the

punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the

time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.“

5. In view of the above, there is no infirmity in the order rejecting the approval application. The Conciliation Officer has not committed any jurisdictional error which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)